

HUMAN SERVICES BOARD

INTRODUCTION

FINDINGS OF FACT

1. The petitioner is the divorced mother of five children. A Vermont divorce decree of modification dated August 21 2007 awarded sole legal and physical custody of the four younger children to the petitioner, and granted the children's father specific visitation rights. The decree provided for shared legal custody of the oldest child, with

the father being awarded sole physical custody, and visitation with the petitioner.

2. Shortly after the decree was entered the oldest child was placed in foster care (presumably pursuant to a CHINS proceeding). In June 2008, the oldest child was placed in the petitioner's home, where he has remained as of the date of the hearing.

3. Until August 2008 the petitioner was employed full time. She did not apply for or receive Reach First or Food Stamps during this time. She maintains that except for August 2008 all five children have spent a majority of their time in her home.

4. Unbeknownst at first to the petitioner, the children's father applied for Reach First benefits for himself and the three younger children on May 22, 2008. Sometime prior to August 1, 2008 the Department found him eligible for Reach First based on its determination that those three children were with him a majority of the time that summer. (Although it is not clear from the evidence, it is presumed that he was also granted Food Stamps for these children during this time.)

5. The petitioner lost her job in July 2008. On July 31, 2008 she applied for Reach First and Food Stamps for

herself and all five of her children. The Department granted her applications for herself and her two older children, but it determined that the three younger children were living with their father for purposes of Reach First and Food Stamps.

6. The Department subsequently determined that all five children were living with the petitioner as of September 1, 2008, and it granted her benefits under both programs for all five children as of that date. This appeal concerns only the household status of the three younger children for the month of August 2008.

7. There is no dispute that before the petitioner lost her job in July she was scheduled to attend a work conference for a week in August. The petitioner admits she arranged in advance with the children's father for the three younger children to stay at his house during that time. Although she did not attend the conference, the petitioner admits that the three younger children spent a majority of their time in August with their father because he had enrolled them in sports camp and had arranged a visit with them to his parents.

8. An investigation by the Department in August determined that the three younger children were mostly with their father, a fact that the petitioner does not dispute.

9. On the basis of its investigation the Department concluded that the three younger children's father was eligible to receive Reach First and Food Stamps in their behalf for August (based on his May 2008 application), and that for August the petitioner was not eligible to receive benefits in their behalf.

10. There is no dispute that the children's father has not had physical or legal custody of any of the three younger children at any time since August 2007.¹

ORDER

The Department's decision denying the petitioner's application for Food Stamps for the three younger children in August 2008 is affirmed. The decision not including those children in the petitioner's Reach First grant for August is reversed.

¹ In its August 2007 modification order the Family Court found "that the father has an unbridled penchant for manipulation". At the fair hearing, the Department's investigator admitted that he may well have reached a different conclusion in his investigation if he had been aware of this particular finding.

REASONS

The Food Stamp regulations define a household to include a parent "living with" their children. W.A.M. § 273.1(a)(2)(i)(C). Inasmuch as there is no mechanism in the regulations to pro-rate Food Stamps between more than one household, the Board has upheld the Department's policy in such cases of determining where the children eat a majority of their meals. Fair Hearing Nos. M-01/08-46, 14,929 and 6,345. The Food Stamp regulations do not mention physical or legal custody or responsibility, and household composition for Food Stamps can change on a month-to-month basis.² See Fair Hearing No. M-01/08-46.

In this case, the petitioner essentially admits that in August 2008 the three younger children ate a majority of their meals with their father. It appears that the children's father received Food Stamps in their behalf during this month. It cannot, therefore, be concluded that the Department's denial of Food Stamps for the petitioner for these children for that month was contrary to the pertinent regulations.

² It is thus possible that parents who have lost custody of their children through CHINS can qualify for Food Stamps even though they might not qualify for Reach Up or Medicaid in their children's behalf.

However, the same analysis is not at all applicable in determining eligibility for Reach First benefits. For that program the regulations and many past rulings by the Board unequivocally establish that physical and legal "custody" is crucial. See, e.g., Fair Hearing No. M-02/08-66. In this case there is no question that all times, including August 2008, the petitioner was the primary caretaker of all her children. The applicable regulation, W.A.M. § 2242.2, defines an "eligible parent as "an individual who . . . lives in the same household with one or more eligible . . . children." W.A.M. § 2302.1 includes the following provision regarding "residence":

To be eligible for Reach Up, a child must be living with a relative or a qualified caretaker. . . The relative or caretaker responsible for care and supervision of the child shall be a person of sufficient maturity to assume this responsibility adequately. Parents and children living together must be included in the same assistance group.

"Home" is defined by W.A.M. § 2302.13 as follows:

A "home" is defined as the family setting maintained, or in process of being established, in which the relative or caretaker assumes responsibility for care and supervision of the child(ren). However, lack of a physical home (i.e. customary family setting), as in the case of a homeless family is not by itself a basis for disqualification (denial or termination) from eligibility for assistance.

The child(ren) and relative normally share the same

household. A home shall be considered to exist, however, as long as the relative is responsible for care and control of the child(ren) during temporary absence of either from the customary family setting.

As noted above, there is no question in this case that the petitioner has been granted sole physical and legal custody of all her children, and that the children, in fact "reside" in the petitioner's home. The petitioner never ceased maintaining a "home" for the children. It is clear that in August 2008 the children spent nothing more than an extended visitation with their father. At no time did physical or legal "responsibility" for their care and supervision shift to him within the meaning of either the above regulations or the Family Court's custody decree.³

The Department is, of course free to review and reconsider its decision allowing the children's father to have received Reach First benefits for August 2008 (and any other month).⁴ However, for the above reasons the Department's decision regarding the petitioner's eligibility

³ The hearing officer is aware of no case in which the Department has ever terminated Reach Up or Medicaid eligibility of children living with their custodial parent based solely on an extended visitation with a non-custodial parent.

⁴ Contrary to the Department's assertion, the only "absurd result" in this matter would be if the Department does *not* determine that it erroneously paid Reach Up benefits to the children's father in August 2008.

for these benefits in August 2008 must be reversed. 3 V.S.A.
§ 3091(d) and Fair Hearing Rule No. 1000.4D.

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